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PUC DOCKET NO. 35639

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APPLICATION OF CENTERPOINT  
ENERGY HOUSTON ELECTRIC,  
LLC FOR APPROVAL OF  
DEPLOYMENT PLAN AND  
REQUEST FOR SURCHARGE FOR  
AN ADVANCED METERING  
SYSTEM §  
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BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS

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**NOTICE OF CONFIDENTIAL FILING BY  
CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC**

CenterPoint Energy Houston Electric, LLC (CEHE or Company) files this notice that it has submitted under seal the complete, unredacted versions of the redacted contracts submitted with the application in this docket (the AMS Contracts). The AMS Contracts were filed as protected material under the terms of the proposed protective order included as Attachment 1 to the application. This notice is filed to comply with the requirement in paragraph 4 of the proposed protective order.

**SUMMARY**

Portions of the AMS Contracts are exempt from public disclosure pursuant to the Texas Public Information Act (TPIA), TEX. GOV'T CODE §§ 552.001 *et seq.* Public disclosure of this exempt information could cause substantial competitive harm and would be contrary to a stated legislative policy in the Public Utility Regulatory Act to protect the confidentiality of sensitive information.

**OVERVIEW OF THE EXEMPT INFORMATION**

The AMS Contracts contain the specifics of the Company's contractual relationship with the vendors providing services to support its AMS plan, including prices and fees and other competitively sensitive terms and conditions. Therefore, CEHE submitted the unredacted AMS Contracts under the terms of the proposed protective order. Counsel for CEHE

has reviewed this information sufficiently to state in good faith that this information is exempt from public disclosure under the TPIA.

## DISCUSSION

**A. Certain information in the AMS Contracts constitutes a “trade secret” exempt from disclosure under TPIA § 552.110(a).**

TPIA § 552.110(a) provides that “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” is exempt from disclosure requirements of the TPIA. TEX. GOV’T CODE § 552.110(a) (Supp. 2001). The Texas Supreme Court has adopted the definition of “trade secret” in Restatement of Torts § 757, which holds a trade secret to be:

[A]ny formula, pattern, device or compilation of information used in one's business, and which gives him an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating, or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates, or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

*Hyde Corp. v. Huffines*, 315 S.W.2d 763, 776 (Tex.) *cert. denied*, 358 U.S. 898 (1958). The Texas Attorney General has, in turn, adopted that definition in determining whether information is a trade secret under § 552.110(a). Open Records Decision No. 552 at 2 (1990).

Under the criteria set forth by the Texas Supreme Court and adopted by the Texas Attorney General, there are six factors to consider in determining whether particular information meets the above definition of a trade secret:

- (a) the extent to which the information is known outside of [the company's] business;

- (b) the extent to which it is known by employees and others involved in [the company's] business;
- (c) the extent of measures taken by [the company] to guard the secrecy of the information;
- (d) the value of the information to [the company] and [its] competitors;
- (e) the amount of effort or money expended by [the company] in developing the information; [and]
- (f) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Id.*

CEHE asserts that the factors above are met for the information described above contained in the AMS Contracts. The information described above in the AMS Contracts is therefore exempt from public disclosure under TPIA § 552.110(a).

**B. Certain information in the AMS Contracts constitutes “commercial or financial information” exempt from disclosure under TPIA § 552.110(b).**


In 1999, the Texas Legislature amended § 552.110 of the TPIA by specifically recognizing that the disclosure of commercial or financial information can cause substantial competitive harm to the person from whom the information was obtained. *See* TEX. GOV'T CODE § 552.110(b) (Supp. 2001). This amendment removed the express requirement that the information needed to be privileged or confidential by statute or judicial decision to be exempted from disclosure. The express language of the liberalized exemption in § 552.110(b) is to protect commercial or financial information in order to foster competition.

CEHE asserts that the factors above are met for the information described above and contained in the AMS Contracts. The information described above in the AMS Contracts is confidential commercial and/or financial information. The release of such information to competitors would harm one or more parties to the contracts. The information is therefore exempt from public disclosure under TPIA § 552.110(b).

## CONCLUSION

Information contained in the AMS Contracts is exempt from public disclosure under the TPIA. Therefore, CEHE has filed this information under seal in accordance with the proposed protective order and the Commission's procedural rules. CEHE requests that the Commission seek an opinion from the Texas Attorney General before disclosing this information to the public.

Respectfully submitted,



James H. Barkley  
State Bar No. 00787037  
Baker Botts L.L.P.  
910 Louisiana  
Houston, Texas 77002  
(713) 229-1234  
(713) 229-1522 (fax)

Scott E. Rozzell  
Executive Vice President and General Counsel  
State Bar No. 17359800  
George W. Schalles III  
Associate General Counsel  
State Bar No. 1772550  
CenterPoint Energy, Inc.  
P.O. Box 61867  
Houston, Texas 77208  
(713) 207-7418  
(713) 207-0141 (fax)

ATTORNEYS FOR CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC

APPLICATION OF CENTERPOINT	§	BEFORE THE
ENERGY HOUSTON ELECTRIC,	§	
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REQUEST FOR SURCHARGE FOR	§	
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SYSTEM	§	OF TEXAS

**PROPOSED ORDER GRANTING INTERIM RATES**

On May 5, 2008, CenterPoint Energy Houston Electric, LLC (CEHE) filed an application requesting approval to implement a Deployment Plan and Request for Surcharge for an advanced metering system (AMS). In CEHE's application, the Company requested that the infrastructure portion of its proposed surcharge go into effect July 3, 2008 consistent with PURA § 39.107(h) and (i) and P.U.C. PROC. R. 22.125. A request for interim relief may be granted upon a showing of good cause.

[A hearing on CEHE's request for interim rates was held on \_\_\_\_\_, 2008.]

[No party in this docket requested a hearing on CEHE's request for interim rates.] CEHE has demonstrated the following.

- 1) CEHE has already spent nearly \$25 million in shareholder dollars on the pilot project to facilitate AMS.
- 2) CEHE is capital constrained as a result of growth and needs interim rates to provide the needed cash flow to fund continued AMS deployment.
- 3) Due to the time value of money, starting the infrastructure component of the surcharge immediately reduces the overall costs of the deployment and is therefore in the public interest.



- 4) Immediate implementation of the infrastructure portion of the surcharge is consistent with the Texas Legislature's directive in PURA § 39.107(i) that AMS "be deployed as rapidly as possible."

Accordingly, CEHE's proposed infrastructure surcharge, as set forth in its application, is hereby established as an interim rate effective July 3, 2008.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of \_\_\_\_\_ 2008.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**BARRY T. SMITHERMAN, CHAIRMAN**

\_\_\_\_\_  
**JULIE CARUTHERS PARSLEY, COMMISSIONER**

\_\_\_\_\_  
**PAUL HUDSON, COMMISSIONER**

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**APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR  
APPROVAL OF DEPLOYMENT PLAN AND REQUEST FOR SURCHARGE FOR AN  
ADVANCED METERING SYSTEM**

CenterPoint Energy Houston Electric, LLC (“CEHE” or the “Company”) files this application for approval of an initial Deployment Plan and a surcharge for its proposed advanced metering system (“Application”) pursuant to PURA § 39.107 and P.U.C. SUBST. R. 25.130.

**I. INTRODUCTION**

CEHE seeks approval for an initial deployment of an advanced metering system (“AMS”) for the lesser of 250,000 advanced meters or the number of meters that can be supported by 6,000 cell relays as requested by retail electric providers (“REPs”). AMS can provide significant benefits to the Texas retail electric market by making it possible for REPs to deliver innovative new products to their customers; by making it easier and faster to perform a variety of services, such as disconnections and reconnections on CEHE’s system; and by providing fast, reliable data about electric system reliability and usage to end-use customers and their REPs, CEHE, and ERCOT. To realize the potential benefits of AMS, CEHE seeks by this Application approval of: (1) CEHE’s Deployment Plan, including specific, significant details of that plan; (2) the required Statement of Functionality with a finding that CEHE’s proposed AMS meets the Commission’s requirements; (3) a surcharge as permitted by PURA § 39.107(h) and the Commission’s rules that will allow the Company to recover the costs of its initial

deployment; and (4) CEHE's proposed effective date of July 3, 2008, for the infrastructure portion of its proposed surcharge.

## **II. AUTHORIZED REPRESENTATIVES**

The telephone numbers and addresses of CEHE's authorized legal representatives are as follows:

Scott E. Rozzell, Executive Vice President and General Counsel  
George W. Schalles III, Associate General Counsel  
CenterPoint Energy, Inc.  
P.O. Box 61867  
Houston, Texas 77208  
(713) 207-7418  
(713) 207-0141 (fax)

James H. Barkley  
Baker Botts LLP  
910 Louisiana  
Houston, Texas 77002  
(713) 229-1234  
(713) 229-1522 (fax)

The telephone number and address of CEHE's authorized business representative are as follows:

Paul D. Gastineau, Director, Rates & Regulatory Research  
CenterPoint Energy, Inc.  
P.O. Box 4567  
Houston, Texas 77210-4567  
(713) 207-7347  
(713) 207-9819 (fax)

CEHE requests that all information and documents in this proceeding be served on each of the persons above at their respective addresses or fax numbers.

## **III. JURISDICTION**

The Commission has jurisdiction over the subject matter of this Application pursuant to PURA §§ 14.001, 14.002, 39.107, and P.U.C. SUBST. R. 25.130.

#### IV. AFFECTED PERSONS AND TERRITORIES

The Application, if approved, will affect REPs serving all non-IDR metered retail electric customers in the applicable rate classes in CEHE's service area. Costs to retail electric customers will depend on how REPs pass along to their retail electric customers the surcharge resulting from this Application.

#### V. OVERVIEW OF FILING PACKAGE

As described in the Application, the deployment of AMS by CEHE can produce benefits to the electric market by encouraging dynamic pricing and demand response and providing more choices for retail electric customers.

Although AMS technology offers the potential for significant savings to the Texas electric market, CEHE will not realize savings as a result of the initial deployment. Rather, CEHE will incur significant one-time costs, as well as ongoing expenses. For this reason, the Company requests assurances from the Commission that its initial Deployment Plan, including specific, important details of that plan are reasonable and necessary and not subject to hindsight review in future proceedings. CEHE also seeks a surcharge to pay the costs of its initial deployment.

The filing package comprises three elements: a Request for Approval of Deployment, a Statement of AMS Functionality, and a Request for Surcharge.

**Request for Approval of Deployment.** In its Request for Approval of Deployment, CEHE seeks Commission approval to deploy the lesser of 250,000 advanced meters or the number of meters that can be supported by 6,000 cell relays when and where requested by REPs.

**Statement of AMS Functionality.** CEHE seeks Commission approval of the Statement of Functionality, filed pursuant to P.U.C. SUBST. R. 25.130, confirming that the AMS technology to be deployed meets the requirements of the Commission's rules.

**Request for Surcharge.** The Request for Surcharge seeks a Commission-approved surcharge for the proposed initial deployment. The surcharge would include a usage-based infrastructure component (applicable to all non-IDR metered retail electric customers in the applicable rate classes immediately upon Commission approval and effective for eight years) and a per month meter component (applicable only to those retail electric customers with an installed advanced meter and effective for five years). The chart below summarizes the changes for each affected rate class assuming interim rates are approved.

**AMS Surcharge with Interim Rates**

<u>Rate Class</u>	<u>Infrastructure Surcharge</u>	<u>Meter Surcharge</u>
Residential Service	\$0.001728 PER KWH	\$4.75
Secondary <= 10 kVA	\$0.002399 PER KWH	\$10.46
Secondary > 10 kVA	\$0.029637 PER KVA	\$10.46
Primary	\$0.006334 PER KVA	\$10.46

However, if interim rates are denied, then in order to account for the time value of money, the surcharge would have to be adjusted as shown below to fully recover the Company's revenue requirement.

**AMS Surcharge without Interim Rates**

<u>Rate Class</u>	<u>Infrastructure Surcharge</u>	<u>Meter Surcharge</u>
Residential Service	\$0.001815 PER KWH	\$4.75
Secondary <= 10 kVA	\$0.002511 PER KWH	\$10.46
Secondary > 10 kVA	\$0.031024 PER KVA	\$10.46
Primary	\$0.006625 PER KVA	\$10.46

The surcharge (both with and without interim rates) was calculated using CEHE's latest approved pre-tax weighted average cost of capital of 10.93%.

The filing package supporting this Application contains the direct testimony of six Company witnesses.

**Tom Standish**, Senior Vice President of CenterPoint Energy, Inc. and Group President of Regulated Operations, discusses the three elements of CEHE's application as well as a summary of the supporting testimony. He describes the AMS initial deployment costs, which CEHE estimates will be \$256 million in capital expenditures and \$145 million in operations and maintenance through 2016, and further explains the Company's rationale for a limited initial deployment. Finally, he addresses the next steps required of the Commission to permit CEHE to move forward with its initial deployment and to ensure that potential market benefits become a reality.

**Don Cortez**, Vice President of Regulated Operations Technology for CenterPoint Energy Service Company, LLC, is the executive with day-to-day responsibility for the AMS deployment. His testimony describes the technical components of CEHE's proposed AMS design; explains the system's functionality and how it meets the requirements of the Commission's rules; and provides timelines for deploying the initial AMS communication, metering, and systems hardware and software. He supports approximately \$266 million of the capital investments and O&M expenses that are reasonable and necessary to complete CEHE's initial AMS deployment and describes the steps taken by CEHE to manage prudently its initial AMS deployment effort. His testimony includes an explanation of the security features already built into the various components of CEHE's AMS to protect customer information and privacy.

**Susan Neel**, Director of Electric Market Operations for CEHE, explains the billing system design and sizing requirements as well as the associated costs that CEHE will require to interface with ERCOT and REPs in order to realize the potential market benefits of AMS deployment. Ms. Neel also explains the IT infrastructure and associated costs that will be required to realize the market benefits from AMS deployment in CEHE's service territory. Ms. Neel's testimony supports approximately \$54 million in capital expenditures and roughly \$41 million in operations and maintenance expenses for the IT systems required to support AMS deployment.

**Kenny Mercado**, Senior Vice President of Electric Operations for CEHE, explains why CEHE reasonably anticipates that the initial deployment of AMS will not produce savings for the Company. He supports roughly \$38 million in costs, including OMR meters, additional staffing requirements, and certain communications costs that the Company will incur as a result of the proposed AMS initial deployment.

**Dan Hagen**, Vice President of Finance, Regulated Operations, for CenterPoint Energy Service Company, LLC, addresses several accounting issues. He explains the appropriate accounting treatment for the proposed surcharge for both regulatory and external financial reporting purposes as well as the need for a regulatory asset or liability account to track the difference between the amount of the surcharge collected and the amount that should be recognized on an annual basis based on the revenue requirements related to AMS implementation. He explains why the Company has established an amortization rate of 20.0% for the advanced meters and explains the Company's proposal for rate recovery of the remaining book value of existing meters replaced by the AMS. He also

proposes a method for amortizing the costs of CEHE's AMS pilot project and how the Company intends to account for any funds received under the Advanced Meter Information Network ("AMIN") Plan proposed in Docket No. 35640. Lastly, he explains how the Company plans to meet the reporting requirements of P.U.C. SUBST. R. 25.130(k)(5).

**Paul Gastineau**, Director of Rates and Regulatory Research for CenterPoint Energy Service Company, LLC, determines the Company's revenue requirements, calculates the two-part surcharge designed to recover the net costs of AMS, and proposes seven new Company-specific discretionary charges related to advanced metering. His testimony supports the \$2 million in rate case expenses that the Company seeks as part of its request for surcharge.

## **VI. PROTECTIVE ORDER**

CEHE requests entry of the protective order attached as Attachment 1. This protective order is largely the same as that used in Docket No. 32093, CEHE's last rate case. Due to the competitive nature of certain documents included in the filing package, CEHE incorporated into the proposed protective order language from paragraph 36 of the protective order issued in Docket No. 29526 to govern similar competitive information. CEHE has designated certain documents in the filing package as Protected or Highly Sensitive Protected Material under the terms of the proposed protective order and anticipates it being necessary for CEHE or other parties to submit documents containing confidential material during discovery in this case. CEHE will allow parties access to confidential information before the protective order is issued if parties will sign a confidentiality agreement agreeing to be bound by the protective



order (if and as it might be modified by the Commission) as if it had been issued by the Commission.

## **VII. PROPOSED PROCEDURAL SCHEDULE**

Because the deployment of AMS by CEHE is expected to produce significant benefits to the Texas electric market, expediting the final approval of the Application is in the public interest. The Company therefore requests that the Commissioners hear this Application rather than referring it to the State Office of Administrative Hearings. Attachment 2 is a proposed procedural schedule that would result in completion of this docket within 150 days as required by P.U.C. SUBST. R. 25.130(d)(7).

## **VIII. INTERIM RELIEF**

Pursuant to P.U.C. Proc. R. 22.125, CEHE requests that the Commission approve on an interim basis the infrastructure portion of the proposed surcharge and discretionary tariffs effective July 3, 2008. CEHE has already invested nearly \$25 million in shareholder money to fund an AMS pilot project. The Company is currently capital constrained as a result of growth and is depending on an AMS surcharge to ease cash flow concerns and fund AMS deployment. Moreover, due to the time value of money, starting the infrastructure component of the surcharge immediately reduces the overall costs of the deployment and is therefore in the public interest. CEHE's request is consistent with PURA § 39.107(h) and (i) and P.U.C. PROC. R. 22.125.

## **IX. NOTICE**

CEHE intends to provide notice of this proceeding in accordance with P.U.C. PROC. R. 22.51(a). First, in conformance with P.U.C. PROC. R. 22.51(a)(1), CEHE intends to publish the form of public notice attached hereto as Attachment 3 in the *Houston Chronicle*, a newspaper having general circulation in each county containing territory affected by the

proceeding, once each week for four successive weeks. Second, in conformance with P.U.C. PROC. R. 22.51(a)(2), CEHE intends to mail the same form of notice attached hereto as Attachment 3 to each of the REPs listed on the Commission's website as of May 5, 2008. Third, although the Commission has exclusive original jurisdiction over this Application, Attachment 4 is CEHE's proposed form of notice to the governing bodies of all Texas incorporated municipalities retaining original jurisdiction over their rates. Proof of publication in the form of publishers' affidavits and the provision of notice to the municipalities and REPs will be submitted as soon as such documentation is available.

In addition to the notice discussed above, CEHE has provided notice of the filing of this Application to each party that participated in its last rate case, Docket No. 32093, by providing a copy of the non-confidential portions of this Application to the attorneys of record in that proceeding.

**X. PRAYER**

WHEREFORE, PREMISES CONSIDERED, CEHE prays that this Application be granted, and for such other relief to which it may be entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott E. Rozzell", is written over a horizontal line.

Scott E. Rozzell  
Executive Vice President and General Counsel  
State Bar No. 17359800  
George W. Schalles III  
Associate General Counsel  
State Bar No. 1772550  
CenterPoint Energy, Inc.  
P.O. Box 61867  
Houston, Texas 77208  
(713) 207-7418  
(713) 207-0141 (fax)

James H. Barkley  
State Bar No. 00787037  
Baker Botts L.L.P.  
910 Louisiana  
Houston, Texas 77002  
(713) 229-1234  
(713) 229-1522 (fax)

ATTORNEYS FOR CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in Docket No. 32093 by facsimile transmission, hand delivery, or overnight delivery on this 5th day of May, 2008.

Linda L Johnston

PUC DOCKET NO. \_\_\_\_\_

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**PROTECTIVE ORDER**

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials) by a party providing information to the Public Utility Commission of Texas (Commission), including information whose confidentiality is currently under dispute.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records stored or encoded on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. \_\_\_\_\_" or words to this effect and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include not only the documents so designated, but also the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.

2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Texas Public Information Act, TEX. GOV'T CODE, Chapter 552 (TPIA). Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in a proceeding, is or was public knowledge, or which

becomes public knowledge other than through disclosure in violation of this Protective Order.

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.

4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (i) any and all exemptions to the TPIA claimed to be applicable to the alleged Protected Materials; (ii) the reasons supporting the providing party’s claim that the responsive information is exempt from public disclosure under the TPIA and subject to treatment as protected materials; and (iii) that counsel for the providing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the TPIA and merits the Protected Materials designation.

5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party shall be permitted access to Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form. Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, or their staff, copies of Protected Materials may be produced by Commission Staff or the Commission Advising and Docket Management division of the Commission. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.

6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information which a producing party claims is of such a highly sensitive nature that

making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as set forth herein) would expose a producing party to unreasonable risk of harm, including but not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act<sup>1</sup>; (b) contractual information pertaining to contracts that specify that their terms are confidential or which are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; (d) business operations or financial information that is commercially sensitive; and (e) critical energy infrastructure information (CEII) as that term is defined in 18 C.F.R. § 388.113(c)(1). Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. \_\_\_\_\_ or words to this effect and shall be consecutively Bates Stamped in accordance with the provisions of this Protective Order. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party’s designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material**. Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made in order to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. Additionally, each Reviewing Party may make two additional copies of Highly Sensitive Protected Materials for outside consultants whose business offices are located outside Travis County. The additional

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<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN., § 32.101 (c) (Vernon 1998 & Supp. 2007) (PURA).

copies may be maintained at the outside consultants' offices outside of Travis County. All restrictions on Highly Sensitive Protected Materials in this Order shall apply to the additional copies maintained in the outside consultants' offices. A record of any copies that are made of Highly Sensitive Protected Material shall be kept and a copy of the record shall be sent to the producing party at the time the copy or copies are made. The record shall include information on the location and the person in possession of the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as provided by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document. Unless otherwise ordered by the presiding officer, Highly Sensitive Protected Material that is also designated as Critical Energy Infrastructure Information shall be handled consistent with the producing party's policies applicable to CEII.

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.** With the exception of Commission Staff, The Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (i) outside counsel for the Reviewing Party, (ii) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel or, (iii) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review each Highly Sensitive Protected document to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff, OAG and OPC, for the purpose of access to Highly Sensitive



Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8, and be either outside counsel or an outside consultant. Other representatives of the reviewing party who are authorized to view Highly Sensitive Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected documents provided to a Reviewing Party may not be copied except as provided in Paragraph 7 and shall be returned along with any copies made pursuant to Paragraph 7 to the producing party within two weeks after the close of the evidence in this proceeding. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures set forth in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.

11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission

Staff, OPC, and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC, and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures set forth herein.

12. **Delivery of the Copy of Highly Sensitive Protected Material to Staff and Outside Consultants.** The Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification provided in Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification attached hereto.

13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Limited notes may be made by Commission Staff, OPC, and the OAG (if the OAG is representing a party) of Highly Sensitive Protected Materials furnished to them and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the TPIA, an authorized representative of the Commission OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division of the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being

furnished to the Open Records Division. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the Open Records Division.

15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification set forth in the Attachment to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. \_\_\_\_\_. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification set forth in the Attachment to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material that is also CEII under the terms of this Protective Order shall, before inspection of such material, agree in writing to any certification required by the producing party's policies applicable to CEII. A copy of each signed certification shall be provided

by the reviewing party to Counsel for the producing party and served upon all parties of record.

16. Disclosures Between Reviewing Representatives and Continuation of Disclosure Restrictions After a Person is no Longer Engaged in the Proceeding. Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the

documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.

18. **Procedures Regarding Voluminous Protected Materials.** Production of voluminous Protected Materials will be governed by P.U.C. PROC. R. 22.144(h). Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions hereof; provided, however, that before photographic, mechanical or electronic copies can be made, the Reviewing Party seeking photographic, mechanical or electronic copies must complete a written receipt for copies on the attached form identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.
21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (i) any other pending or potential proceeding involving any claim, complaint,

or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (ii) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.

22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from those Materials.** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials, including notes and analyses made from Protected Materials that disclose Protected Materials, are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.
23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing

before a judicial body, the filing party: (i) shall notify the party which provided the information within sufficient time so that the providing party may seek a temporary sealing order; and (ii) shall otherwise follow the procedures set forth in Rule 76a, Texas Rules of Civil Procedure.

24. **Maintenance of Protected Status of Materials During Pendency of Appeal of Order**

**Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. **Notice of Intent to Use Protected Materials or Change Materials Designation.**

Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. \_\_\_\_\_ at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed

disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request a change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or alternatively that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or reviewing party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such



determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. **Maintenance of Protected Status During Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (i) the date of an unfavorable Commission order; or (ii) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines set forth in this paragraph.
29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless and until such additional disclosure is order by the Commission or a court, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, and except for critical energy infrastructure information (CEII), "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. As used in this Protective Order in regard to CEII, "conclusion of these proceedings" refers to the expiration of the Commission's plenary jurisdiction. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers

to Protected Materials, provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the TPIA<sup>2</sup>, the Open Meetings Act<sup>3</sup>, and any other applicable law, provided that parties subject to those acts will give the party asserting confidentiality notice, if possible under those acts, prior to disclosure pursuant to those acts.
33. **Procedures for Release of Information Under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that (i) the Reviewing Party shall notify the party asserting confidentiality of such order at least five (5) calendar days in advance of the release of the information in order for the party asserting confidentiality to contest any release of the confidential information; (ii) the Reviewing Party shall notify the producing party that there is a request for such information within five (5) calendar days of the date the Reviewing Party is notified of the request for information; and (iii) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein.

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<sup>2</sup> TEX. GOV'T CODE ANN. § 552.111 (Vernon 1994 & Supp. 2003).

<sup>3</sup> TEX. GOV'T CODE ANN. § 551.001 (Vernon 1994 & Supp. 2003).

34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body or written opinion of the Texas Attorney General which was sought in compliance with the TPIA. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the TPIA, or intends to comply with the final governmental or court order.
35. **Notify Defined.** “Notify” for purposes of Paragraphs 33 and 34 shall mean written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the TPIA. However, the Commission or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure or Limited Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, should not be disclosed to certain parties, should not be disclosed to certain representatives of parties under the protection afforded by this Order, or that further restrictions should be imposed on its disclosure, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure or limited disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them or why the proposed restrictions should not be applied, including why disclosure without the proposed restrictions is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to P.U.C. PROC. R. 22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

SIGNED \_\_\_\_\_, 2008.

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ADMINISTRATIVE LAW JUDGE

## ATTACHMENT A

## Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission, OAG or OPC shall be used only for the purpose of the proceeding in Docket No. \_\_\_\_\_. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

\_\_\_\_\_  
Signature\_\_\_\_\_  
Party Represented\_\_\_\_\_  
Printed Name\_\_\_\_\_  
Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket and that I will abide by the terms of the Protective Order governing Highly Sensitive Protected Material.

\_\_\_\_\_  
Signature\_\_\_\_\_  
Party Represented\_\_\_\_\_  
Printed Name\_\_\_\_\_  
Date

## ATTACHMENT B

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Confidential &/or HS

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Signature

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Party Represented

---

Printed Name

---

Date



**PROPOSED PROCEDURAL SCHEDULE**

<b>Date</b>	<b>Event</b>
May 5, 2008	Application is filed; request for interim order
May 30, 2008	Intervention deadline and deadline to request hearing on interim rates
June 12, 2008	Depositions (if requested) on interim rates
June 17, 2008	Intervenor direct testimony on interim rates
June 20, 2008	Staff direct testimony on interim rates
June 23, 2008	CEHE's rebuttal testimony on interim rates
June 24-25, 2008	Hearing (if requested) on interim rates
July 3, 2008	Order on interim rates issued on or before this date
August 15, 2008	Intervenor direct testimony and deadline for discovery on CEHE's direct
August 22, 2008	Staff direct testimony
August 29, 2008	CEHE's rebuttal testimony and discovery begins on CEHE's rebuttal
September 2, 2008	Discovery period ends
September 3, 2008	Hearing on the merits begins
September 12, 2008	Initial briefs
September 19, 2008	Reply briefs
September 25, 2008	Final order issued on or before this date*

\*For a May 5th filing, the 150-day statutory deadline falls on October 2nd.

## FORM OF PUBLIC AND REP NOTICE

### NOTICE OF APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR APPROVAL OF DEPLOYMENT PLAN AND REQUEST FOR A SURCHARGE FOR AN ADVANCED METERING SYSTEM

On May 5, 2008, CenterPoint Energy Houston Electric, LLC (CEHE) filed with the Public Utility Commission of Texas (Commission) an application under Public Utility Regulatory Act (PURA) § 39.107 and 16 T.A.C. § 25.130 requesting approval of an initial Deployment Plan and surcharge for a planned advanced metering system (the Application). The Application, if approved, will affect REPs serving non-IDR metered retail electric customers in the applicable rate classes in CEHE's service area. Costs to retail electric customers will depend on how the REPs are required to or choose to pass along to their retail electric customers the surcharge resulting from this Application.

CEHE seeks approval for an initial deployment of an advanced metering system (AMS) comprising the lesser of 250,000 advanced meters or the number of meters that can be supported by 6,000 cell relays as requested by retail electric providers (REPs). AMS can provide significant benefits to the Texas retail electric market by making it possible for REPs to deliver innovative new products to their customers; by making it easier and faster to perform a variety of services, such as disconnections and reconnections on CEHE's system; and by providing fast, reliable data about electric system reliability and usage to end-use customers and their REPs, CEHE, and ERCOT. In its Application, CEHE seeks approval of a two-component surcharge that will include a usage-based infrastructure component (applicable to all non-IDR metered retail electric customers in the applicable rate classes immediately upon Commission approval and effective for eight years) and a meter component (applicable only to those retail electric customers with an installed advanced meter and effective for five years).

To realize the potential benefits of AMS, CEHE seeks by this Application approval of: (1) CEHE's Deployment Plan, including specific, significant details of that plan; (2) the required Statement of Functionality with a finding that CEHE's proposed AMS meets the Commission's requirements; (3) the requested surcharge as permitted by PURA and the Commission's rules that will allow CEHE to recover the costs of its initial deployment; and (4) CEHE's proposed effective date of July 3, 2008, for the infrastructure portion of its proposed surcharge.

Persons with questions or who want more information about the Application may contact Linda Johnston of CEHE at 1111 Louisiana, Houston, Texas 77002 or by calling 713-207-5218. A complete copy of the Application is available for inspection at the address listed above.

Pursuant to 16 T.A.C. § 25.130, the Commission must issue an order no later than 150 days after the Application was filed. The Commission has assigned Docket No. \_\_\_\_\_ to the Application and the proceeding. Persons who wish to intervene in or comment upon these proceedings should notify the Commission as soon as possible, as an intervention deadline will be imposed. Unless otherwise ordered by the presiding officer, requests to intervene must be filed by May 30, 2008. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136.

**FORM OF NOTICE TO MUNICIPALITIES**

[date]

[Mayor, City Secretary or other appropriate official]

[Name of City]

[Address line 1]

[Address line 2]

**Re: Application of CenterPoint Energy Houston Electric, LLC for Approval of  
Deployment Plan and Request for Surcharge for Advanced Metering System**

Dear [Mayor, City Secretary or other appropriate official]:

On May 5, 2008, CenterPoint Energy Houston Electric, LLC filed with the Public Utility Commission of Texas an application under Public Utility Regulatory Act (PURA) § 39.107 and 16 T.A.C. § 25.130 requesting approval of an initial Deployment Plan and surcharge for a planned advanced metering system.

For your convenience, attached is a copy of the application (without attachments) and the executive summary of the application. Should you have any questions concerning this matter or if you wish to receive a copy of the entire application, please contact me at [phone number].

Very truly yours,

[Name]

[Title]

PUC DOCKET NO. \_\_\_\_\_

APPLICATION OF CENTERPOINT  
ENERGY HOUSTON ELECTRIC,  
LLC FOR APPROVAL OF  
DEPLOYMENT PLAN AND  
REQUEST FOR A SURCHARGE FOR  
AN ADVANCED METERING  
SYSTEM

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BEFORE THE  
  
PUBLIC UTILITY COMMISSION  
  
OF TEXAS

DIRECT TESTIMONY OF

THOMAS R. STANDISH

FOR

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC

May 5, 2008

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## EXECUTIVE SUMMARY

For the first time, Texas electric consumers have the opportunity to use a powerful new tool to better understand, monitor, and manage their electric usage. CenterPoint Energy Houston Electric, LLC (CEHE) seeks approval of a Deployment Plan for an advanced metering system (AMS). The Deployment Plan calls for an initial deployment, the details of which are set forth in this application, in which CEHE would deploy up to 250,000 advanced meters when and where requested by retail electric providers (REPs). The initial deployment would be subject to a realistic maximum monthly deployment rate, but its duration would otherwise depend entirely on the level of demand for advanced meters. After the market for AMS has sufficiently matured, CEHE plans to file a plan for completing full deployment throughout its service territory. AMS deployment can facilitate significant benefits to the Texas electric market by (i) making it possible for REPs to offer innovative new products to their customers; (ii) prompting demand response and increased energy efficiency, which in turn could save the Texas electric market hundreds of millions of dollars every year; (iii) making it easier and faster to perform services such as connections, disconnections, and meter readings; and (iv) providing fast, reliable information about electric market and system reliability conditions to CEHE, end-use customers, REPs, and ERCOT.

The costs of AMS are significant, however. If approved by the PUC and by the CenterPoint Energy Board of Directors, CEHE estimates that it would need to invest \$256 million in capital expenditures and \$145 million in operation and maintenance costs through 2016 to support the initial deployment. If CEHE moves to full deployment, CEHE could incur significant additional costs. CEHE bears the operational risk associated with this leading edge technology. Yet CEHE has little control over whether and how quickly the market for AMS matures. A mature market

requires strong customer demand for AMS and a diverse offering of AMS-supported services by REPs. A mature AMS market also depends upon the introduction of new rules and systems by ERCOT that facilitate AMS service offerings. Accordingly, CEHE proposes a limited initial deployment, including a load research effort and a customer education program, to provide an opportunity for the market to mature sufficiently to support full deployment.

AMS offers the potential for significant savings to the Texas electric market. CEHE, on the other hand, will not realize savings as a result of its initial AMS deployment. Rather, CEHE will incur both significant one-time costs and additional ongoing expenses from such deployment. The Company will also experience decreased revenues as a result of the demand response and energy efficiency triggered by AMS deployment. Only by considering overall market benefits can AMS deployment by CEHE be economically justified. CEHE already has a large capital program to meet its growing distribution and transmission needs. CEHE's initial deployment of AMS will give rise to roughly \$400 million in capital costs and operations and maintenance expenses.

In return for taking on this additional voluntary expenditure and for its willingness to implement technological changes that benefit others, CEHE seeks four things: (1) approval of CEHE's Deployment Plan, including specific, significant details of its initial deployment in findings of fact and conclusions of law; (2) approval of CEHE's required Statement of Functionality, with a finding that CEHE's proposed AMS meets the Commission's requirements, except as expressly permitted by Commission order; (3) approval of a surcharge for initial deployment, as permitted by PURA and the Commission's rules, that will allow CEHE to recover the costs of its initial AMS deployment and a fair return on its initial AMS investment; and (4) permission to begin collecting the infrastructure portion of the surcharge on an interim basis effective July 3, 2008.

For residential customers, the surcharge for initial deployment would include a \$0.001728 per kWh infrastructure component (applicable to all customers immediately upon Commission approval and effective for eight years) and a \$4.75 per month meter component (applicable only to customers with an installed advanced meter and effective for five years). Assuming interim rates are granted, surcharges for all customer classes are summarized in the following chart.

<u>Rate Class</u>	<u>Infrastructure Surcharge</u>	<u>Meter Surcharge</u>
Residential Service	\$0.001728 per kWh	\$4.75
Secondary <= 10 kVA	\$0.002399 per kWh	\$10.46
Secondary > 10 kVA	\$0.029637 per kVA	\$10.46
Primary	\$0.006334 per kVA	\$10.46

The prudence of a decision or action must be judged at the time the decision is made or the action taken, not years later with the benefit of hindsight. Consistent with presenting its Deployment Plan in detail prior to actual deployment, CEHE will justifiably seek binding findings of fact in this proceeding that its Deployment Plan, along with specific, important details of its initial deployment, are reasonable and necessary. CEHE fully expects to be reviewed and judged in the future on whether it followed its Deployment Plan and whether it reasonably and prudently managed the implementation of its Deployment Plan and the underlying contracts. However, long-term protection against future disallowances based on creative hindsight and second-guessing will be critical to obtaining and maintaining on-going approval from the CenterPoint Energy, Inc. Board of Directors to go forward with CEHE's proposed AMS deployment. That protection needs to include recognition that AMS is a leading-



edge technology, that CEHE will be constantly learning and adjusting as it executes its Deployment Plan, and that even with reasonable and prudent management, cost increases will often result from unforeseeable technological hurdles. Moreover, CEHE seeks recognition, through approval of its Deployment Plan, that the Company does not (and cannot) control many of the factors that will determine whether there is a mature market that permits AMS to produce the potential benefits.

CEHE requests approval of its Deployment Plan, Statement of Functionality, and surcharge and permission to implement the infrastructure portion of that surcharge effective July 3, 2008, so that the Company can begin initial deployment of an AMS that will provide the platform from which the Commission and other market participants can better serve the needs of Texas electric consumers.

**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME, BUSINESS AND POSITION.**

A. I am Tom Standish, Senior Vice President of CenterPoint Energy, Inc. (“CenterPoint Energy”) and Group President of Regulated Operations. In that capacity, I have direct responsibility for the transmission and distribution (“T&D”) utility operations of CenterPoint Energy Houston Electric, LLC (“CEHE” or “Company”) and the operational and financial planning needed to enable CEHE to fulfill its mission of providing high-quality electric delivery services to the residents, businesses, and governmental entities in the Houston – Galveston area and the adjacent portions of the Texas Gulf Coast. I am an electrical engineer with thirty-five years of experience in the electric industry, including over twenty-three years with CEHE and its predecessors. I have appeared before the Public Utility Commission of Texas (“PUC” or “Commission”) a dozen times as a witness and numerous times in workshops and Open Meetings as a representative of CEHE or its predecessors. A more detailed resume of my qualifications can be found at Figure TRS-1.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. My testimony provides an overview of CEHE’s proposed deployment of an advanced metering system (“AMS”) in its retail electric service area. In its initial deployment, CEHE is prepared to invest an estimated \$256 million in capital expenditures to install an AMS comprising the lesser of 250,000 advanced meters or the number of meters that can be supported by 6,000 cell relays as requested by retail electric providers (“REPs”) along with the associated communications systems, software, and data management systems necessary to make the initial deployment work. During the